

①

83 - 1744
NO.

Office - Supreme Court, U.S.
FILED

APR 25 1984

ALEXANDER L. STEVAS.
CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1983

DEFELICE MARINE CONTRACTORS, INC.,
Individually and as a Division of
Gulf Fleet Marine Operations, Inc.

Petitioner

versus

JAMES A. RAY,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL,
FIFTH CIRCUIT, STATE OF LOUISIANA

GEORGE W. HEALY, III
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: (504) 566-1311
Counsel of Record for Petitioner

April, 1984

Of Counsel:

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

QUESTION PRESENTED FOR REVIEW

The question presented for review is whether the uniform federal maritime law, as established by this Court in *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942), permits a state court to require that a shipowner seeking to sustain the validity of a seaman's release prove not only that the seaman executed the release freely, without deception or coercion, and with a full intellectual understanding of his rights, but also with what the Court of Appeal for the Fifth Circuit of the State of Louisiana has termed as an "emotional understanding."

LIST OF PARTIES

The parties to the proceedings in the Court of Appeal for the Fifth Circuit of the State of Louisiana were James A. Ray and DeFelice Marine Contractors, Inc., individually and as a division of Gulf Fleet Marine Operations, Inc. The following statement is provided in accordance with Rule 28.1 of the Rules of the Supreme Court of the United States.

(1) At the time the cause of action herein arose, petitioner, DeFelice Marine Contractors, Inc., was a division of Gulf Fleet Marine Operations, Inc. It had no subsidiaries. DeFelice Marine Contractors, Inc. no longer exists as a separate corporate entity, having been merged into Gulf Fleet Marine Corporation.

(2) Gulf Fleet Marine Corporation is a subsidiary of Pott Industries, Inc., which is a subsidiary of Houston Natural Gas Corporation.

(3) The entities affiliated with Gulf Fleet Marine Corporation include:

CELTIC GULF FLEET, INC.
DEMARCO INTERNATIONAL, LTD.
GULF FLEET ATLANTIC, INC.
GULF FLEET CREWS, INC.
GULF FLEET EQUIPMENT, INC.
GULF FLEET FAR EAST PTE, LTD.
GULF FLEET INTERNATIONAL, INC.
GULF FLEET MARINE OPERATIONS, INC.
GULF FLEET MARINE, S.A.
GULF FLEET MARITIMA DO BRASIL, LTDA.
GULF FLEET MIDDLE EAST, INC.
GULF FLEET N.V.

GULF FLEET PACIFIC, INC.
GULF FLEET SUPPLY VESSELS, INC.
GULF FLEET U.K., INC.
GULF FLEET WESTERN, INC.
MARINE LEASING COMPANY
OFFSHORE EQUIPMENT COMPANY
OFFSHORE FLEET INTERNATIONAL, INC.
SERVICIOS Y REPRESENTACIONES
MARITIMOS MEXICANO, S.A.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
List of Parties	ii
Table of Contents	iv
Table of Authorities	v
Opinions Below	1
Jurisdiction	1
Statement of the Case	1
How Federal Question is Presented	3
Reasons for Granting the Writ	4
Conclusion	13
Certificate of Service	14
Appendix A— <i>Ray v. DeFelice Marine Contractors,</i> <i>Inc.</i> , No. 83-C-2561 (La. Jan. 27, 1984)	A-1
Appendix B— <i>Ray v. DeFelice Marine Contractors,</i> <i>Inc.</i> , No. 83 CA 302 (La. App. 5th Cir. Nov. 17, 1983)	A-2
Appendix C— <i>Ray v. DeFelice Marine Contractors,</i> <i>Inc.</i> , 439 So.2d 1102 (La. App. 5th Cir. 1983)	A-3
Appendix D— <i>Ray v. DeFelice Marine Contractors,</i> <i>Inc.</i> , No. 253-621 (Dist. Ct. Dec. 2, 1982)	A-11

TABLE OF AUTHORITIES

Case	Page
U.S. Const. Art. III § 2	4
Jones Act, 46 U.S.C. § 688 (1920)	5
Judiciary Act of 1789 § 9, 1 Stat. 76-77 (corresponds to 28 U.S.C. § 1333 (1982))	4
28 U.S.C. § 1257(3) (1982)	1
<i>Bonici v. Standard Oil Co.</i> , 103 F.2d 437 (2nd Cir. 1939), <i>cert. denied</i> , 308 U.S. 560 (1939)	5, 10
<i>Charpentier v. Fluor Ocean Services, Inc.</i> , 613 F.2d 81 (5th Cir. 1980)	11
<i>Cook v. Moran Atlantic Towing Corp.</i> , 1978 A.M.C. 2134 (S.D.N.Y. 1978)	12
<i>Garrett v. Moore-McCormack Co.</i> , 317 U.S. 239 (1942)	4, 5, 6
<i>Harden v. Gordon</i> , 2 Mason 541, 11 Fed. Cas. 480 (1st Cir. 1823)	10
<i>Harmon v. United States</i> , 59 F.2d 372 (5th Cir. 1932)	7, 10, 11
<i>Merchantile National Bank v. Langdeau</i> , 371 U.S. 555 (1963)	4
<i>New Orleans Fire Fighters Association Local 632</i> <i>v. New Orleans</i> , 263 La. 649, 269 So.2d 194 (La. 1972), <i>cert. denied</i> , 411 U.S. 933 (1974)	4
<i>Ray v. DeFelice Marine Contractors, Inc.</i> , 439 So.2d 1102 (La.App. 5th Cir. 1983)	1, 2, 3, 6, 7, 8, 9, 10, 11
<i>Ray v. DeFelice Marine Contractors, Inc.</i> , No. 253-621 (Dist. Ct. Dec. 2, 1982)	1, 2, 3, 6, 9
<i>Robles v. Trinidad Corp.</i> , 270 F.Supp. 570 (S.D.N.Y. 1966)	7, 8
<i>Strange v. Gulf & South American Steamship Co.</i> , 495 F.2d 1235 (5th Cir. 1974)	11, 12
<i>Turner v. American Dredging Co.</i> , 1977 A.M.C. 122 (E.D.Pa. 1977)	11



OPINIONS BELOW

All of the opinions below are contained in the Appendices to the Petition for Certiorari. Appendix "A" is the denial by the Supreme Court of the State of Louisiana of petitioner's application for a writ of certiorari or review. Appendix "B" is the denial by the Court of Appeal for the Fifth Circuit of the State of Louisiana of petitioner's petition for rehearing. Appendix "C" is the opinion of the Court of Appeal for the Fifth Circuit of the State of Louisiana in *Ray v. DeFelice Marine Contractors, Inc.*, 439 So.2d 1102 (La. App. 5th Cir. 1983). Appendix "D" is the judgment of the Twenty-Fourth Judicial District Court for the Parish of Jefferson in favor of petitioner. *Ray v. DeFelice Marine Contractors, Inc.*, No. 253-621 (Dist. Ct. Dec. 2, 1982).

JURISDICTION

The judgment of the Court of Appeal for the Fifth Circuit of the State of Louisiana, reversing the judgment of the Twenty-Fourth Judicial District Court for the Parish of Jefferson in favor of petitioner, was entered on September 13, 1983. The court of appeal denied a timely petition for rehearing on November 17, 1983. The Supreme Court of the State of Louisiana denied a timely petition for certiorari on January 27, 1984.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) (1982).

STATEMENT OF THE CASE

Respondent, James A. Ray, was employed by petitioner, DeFelice Marine Contractors, Inc., as a seaman. On

September 29, 1978, respondent sustained personal injuries in the course of his employment which resulted in the amputation of his left leg and a partial disability of his right leg. He was treated by an orthopedic specialist who concluded as of May 7, 1979 that he had reached maximum medical cure and could resume gainful employment. *Ray v. DeFelice Marine Contractors, Inc.*, 439 So.2d 1102, 1103 (La. App. 5th Cir. 1983). See Appendix C.

Ray subsequently initiated settlement negotiations with petitioner. Although actively encouraged by family and friends to retain legal counsel, he decided to negotiate his own settlement. *Id.* at 1105. The negotiations culminated in a settlement whereby Ray agreed to release his legal rights against petitioner in consideration of a cash payment of \$115,000, past payments of \$42,182, payment of future prosthetic devices and the petitioner's promise of continued employment. *Id.* at 1102, 1103; *Ray v. DeFelice Marine Contractors, Inc.*, No. 253-621 (Dist. Ct. Dec. 2, 1982), See Appendix D; Record at pp. 652-658, 671-681. The settlement agreement was explained in detail to respondent by experienced maritime counsel specifically retained by petitioner to ensure that all legal requirements for a valid release were met. A sworn verbatim transcript of this discussion was made which is contained in the trial court record at pages 646-695.

Although petitioner's house counsel offered to retain professional investment advice for Ray, he declined this offer. Record at Vol. III, pp. 112-114, Sept. 23, 1982. Within eight months, however, he had dissipated most of the proceeds of the settlement. *Ray*, 439 So.2d at 1103. He lived and worked in Florida until January, 1981, when he returned to work for petitioner in Louisiana. *Id.* at 1103. In May of 1981, while still in petitioner's employ, he brought this

admiralty action in a Louisiana state court seeking to set aside the release, claiming that he had been "coerced into not seeking legal advice," that his "physical and mental condition had precluded his full understanding and appreciation of his injuries" and that the consideration was inadequate. *Ray*, No. 283-621 (Dist. Ct. Dec. 2, 1982). Though he had received both a promotion and a salary increase, approximately a year later he quit work with petitioner to return to work in Florida. *Ray*, 439 So.2d at 1103; Record at Vol. III, pp. 35-36, Oct. 7, 1982.

After considering the testimony of nine witnesses rendered during the course of a three day trial limited to the issue of the validity of the release, and reviewing post-trial memoranda, the trial court specifically rejected each of respondent's claims, finding that he had executed the release with a full understanding of his rights. *Ray*, No. 253-621 (Dist. Ct. Dec. 2, 1982). It rendered judgment in favor of petitioner, from which respondent appealed to the Court of Appeal for the Fifth Circuit of the State of Louisiana. The court of appeal agreed that there had been no fraud, deception or coercion and that Ray had executed the release in full intellectual understanding of his rights. *Ray*, 439 So.2d at 1104, 1105. Notwithstanding these findings, the court reversed the trial court judgment, primarily on the basis of the admittedly speculative testimony of Dr. Marilyn Skinner, a psychiatrist who had first examined respondent two and one-half years after he executed the release. *Id.* at 1103-1105. She conjectured that he lacked "emotional understanding" at the time of the release. *Id.*

HOW FEDERAL QUESTION IS PRESENTED

Respondent claimed rights and sought remedies in the state court under admiralty, and therefore federal, law.

U.S. Const. Art. III § 2. He was only entitled to do so by virtue of federal law. Judiciary Act of 1789 § 9, 1 Stat. 76-77 (corresponds to 28 U.S.C. § 1333 (1982)). Therefore both respondent's contentions and petitioner's defenses present questions of federal law. *Garrett v. Moore-McCormack Co.*, 317 U. S. 239, 243-246 (1942).

The judgment of the Court of Appeal for the Fifth Circuit of the State of Louisiana is final. It conclusively disposed of a matter completely separate and independent from the merits of respondent's claim. *Mercantile National Bank v. Langdeau*, 371 U.S. 555 (1963). Any further consideration of the question presented by petitioner in the state court system is precluded by state law. *New Orleans Firefighters Association Local 632 v. New Orleans*, 263 La. 649, 269 So.2d 194 (La. 1972), *cert. denied*, 441 U.S. 933 (1974). Therefore, this Court, and only this Court, has jurisdiction to review the question presented.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeal for the Fifth Circuit of the State of Louisiana, declaring invalid a seaman's release because of the seaman's alleged lack of "emotional understanding," conflicts in principle with this Court's decision in *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942). In *Garrett*, this Court held that "the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with full understanding of his rights." *Id.* at 248. Addition of the new element of "emotional understanding," which is both internally inconsistent and therefore impossible to define, and, even if susceptible of definition, inherently subjective and therefore impossible to prove, makes *Garrett's* already substantial

burden impossible to carry. Although purporting to apply federal maritime law as established by *Garrett*, the state court has in fact substantially altered a defendant shipowner's obligations under *Garrett*. The decision is therefore not only disruptive of the uniformity of the federal maritime law, *id.* at 244-245, but also creates a powerful disincentive for seamen and shipowners to resolve their disputes amicably. See *Bonici v. Standard Oil Co.*, 103 F.2d 437, 439 (2d Cir. 1939), *cert. denied*, 308 U.S. 560 (1939).

In *Garrett*, a seaman brought suit for personal injuries under the Jones Act, 46 U.S.C. § 688 (1920), and the general maritime law in a Pennsylvania state court. The defendant shipowner denied liability and claimed that suit was barred because the seaman had executed a full release for \$100.00. The plaintiff contested the validity of this release claiming he did not realize what he was signing. After a jury verdict in favor of the plaintiff, the trial court granted the defendant's motion for a judgment notwithstanding the verdict. The court found that the plaintiff had failed to establish the invalidity of the release, as required under Pennsylvania law. Although the Supreme Court of Pennsylvania acknowledged that the state court was required to apply federal law in admiralty cases on substantive issues, it held that the burden of proof was a procedural matter and therefore affirmed. *Id.* at 242. This Court unanimously disagreed. The Court emphasized that it had specifically and repeatedly held that the necessity for the uniformity of the federal maritime law required that it supersede state law. *Id.* at 244-245. A state court construing a seaman's release was consequently required to apply controlling federal maritime law without substantially altering the rights accorded by that law to either litigant. *Id.* at 245. Such alteration would disrupt the

uniformity of the federal maritime law and would “actually deny federal rights.” *Id.*

In this case, a three day trial was held and post-trial memoranda submitted limited to the issue of the validity of the release. The trial court, after having had the opportunity to observe firsthand the demeanor of the various witnesses, and thus assess their credibility, concluded that:

At trial, James A. Ray, impressed the Court as an individual of above average intelligence for his age and educational background. He handled himself well on the witness stand. *The Court is convinced that the release was entered into with a full understanding of the rights of the parties and that James A. Ray was neither mentally nor physically incapacitated from fully understanding and appreciating the consequences of its signing.*

Ray v. DeFelice Marine Contractors, Inc., No. 253-621 (Dist. Ct. Dec. 2, 1982) (emphasis added). Indeed, at trial Ray admitted that he had understood his rights when he executed the release. Record at Vol. III, p. 45, Sept. 22, 1982.

The court of appeal subsequently concurred that there had been no “failure to disclose any known material medical facts nor fraud, deception or coercion” practiced by petitioner. *Ray v. DeFelice Marine Contractors, Inc.*, 439 So.2d 1102, 1105 (La. App. 5th Cir. 1983). It also concurred that respondent was intellectually capable of understanding and did intellectually understand the release. *Id.* at 1104. However, in a departure from established federal maritime jurisprudence, the court of appeal held, as a matter of law, that the shipowner must also demonstrate what it described as the seaman’s “emotional

understanding" of the consequences of his injury. *Id.* at 1105.

The court of appeal made no effort to define, explain or elaborate the meaning of this term. The court did not question the respondent's ability to comprehend the terms of the settlement itself, and the court specifically found that all known material medical facts were revealed to Ray. By "emotional understanding," then, the court apparently intended to require examination of the seaman's ability, as of the time he executed the release, to foresee accurately how he might *feel* about his life, his injury and the settlement at some undetermined point in the future.

The court drew this novel standard from the testimony of Dr. Marilyn Skinner, a psychiatrist whom it quoted extensively in its opinion. *Id.* at 1103-1104. Dr. Skinner, however, did not examine Ray until two and one-half years after he executed the settlement. *Id.* at 1103. She admitted "that she was speculating as to Ray's emotional state at the time of the settlement." *Id.* at 1104. The court of appeal's circumvention of the plaintiff's admission and the trial court's findings of fact by resort to this undefined concept does violence to the standard enunciated by this Court in *Garrett* and thereby to the harmony and uniformity of maritime law.

The court of appeal cited no authority for the proposition that the understanding required by *Garrett* includes an "emotional understanding." There is none. On the contrary, in the only maritime cases in which similar arguments have been advanced federal courts have upheld the validity of the releases. *Harmon v. United States*, 59 F.2d 372 (5th Cir. 1932); *Robles v. Trinidad Corp.*, 270 F.Supp. 570 (S.D.N.Y. 1966). In *Robles*, the court found

that although the plaintiff had been diagnosed as neurotic and suffering from an anxiety reaction, he was neither psychotic nor incapable of understanding the consequences of executing the release. *Id.* at 574-577. It stated that "[a] mistake as to the future unknowable effect of existing facts, . . . or a mistake as to the future effect of a personal injury is insufficient to set aside a release." *Id.* at 575. The court rejected the opinion of a psychiatrist who testified that the plaintiff had signed the release unaware that he was suffering from an emotional condition, noting that the doctor did not examine the plaintiff until four months after he had executed the release. *Id.* at 574. It held that the release was valid and binding. *Id.* at 577.

The Louisiana Court of Appeal cited *Robles* for the proposition that failure to appreciate the consequences of an injury is not sufficient grounds to set aside a release. 439 So.2d at 1104. However, it is precisely such a failure by respondent about which Dr. Skinner hypothesized. *Id.* at 1103-1104. The court stated that respondent presented her testimony in order to show that "Ray did not emotionally understand the consequences of his injury." *Id.* at 1103. The court also itself characterized this case as involving "an emotional inability to understand the consequences of an injury." *Id.* at 1105. The court recognized federal law as controlling, *id.* at 1104, cited federal law for the proposition that such an inability is *not* sufficient grounds to invalidate a release, and then reached the diametrically opposite result. As the *Robles* court understood, *Garrett* does not require that a seaman foresee how he might feel about his life, injury and settlement at any time in the future, but that he appreciate his rights at the time of his settlement.

The court of appeal provided no explanation of how

an "emotional understanding" could possibly be proven. In fact, it is virtually impossible for a shipowner to ascertain, or later to prove, whether at the time a seaman executes a release he is able to foresee how he might feel as a result of his injury at some undetermined point in the future. There may be circumstances in which a seaman's psychological condition rises to the level of psychosis, or otherwise becomes severe enough to result in a mental incapacity to contract. That, however, was clearly not the situation here, where the trial court held that Ray was not mentally incapacitated and the appellate court concurred that he had intellectually understood the consequences of executing the release. *Ray*, 439 So.2d at 1104; *Ray*, No. 253-621 (Dist. Ct. Dec. 2, 1982). Therefore, under *Garrett*, this release is valid and binding. To require additional inquiry into the seaman's ability to foresee accurately potential future emotions related to his injury and settlement alters *Garrett's* burden of proof in a manner which makes it impossible to sustain.

Shipowners are neither psychiatrists nor clairvoyants. Obviously, a person's future emotional state is the product of numerous, variable and unpredictable circumstances. Requiring shipowners to prove that seamen anticipate with satisfactory precision future emotions in order to sustain the validity of their releases will inhibit if not completely preclude voluntary settlements. Shipowners will have no assurance that a release will be valid and binding because neither they nor their counsel will ever be able to assess confidently a seaman's future emotional state. They will therefore be justifiably reluctant to invest the time and money necessary to negotiate settlements. Seamen will be forced to resort to the delay, expense and uncertainty of litigation. This will not serve the interests of seamen or shipowners.

Such consequences were recognized by the United States Court of Appeals for the Second Circuit in *Bonici v. Standard Oil Company*, 103 F.2d 437 (2d Cir. 1939), *cert. denied*, 308 U.S. 560 (1939). There the Second Circuit recited Justice Story's classic statement from *Harden v. Gordon*, 2 Mason 541, 11 Fed. Cas. 480, 485 (1st Cir. 1823), that seamen are wards of the court and are consequently entitled to special solicitude. 103 F.2d at 438. While noting that the burden was on the shipowner to show that a seaman's release was " 'fairly made and fully comprehended by the seaman . . .,' " *id.* at 438-439, quoting *Harmon v. United States*, 59 F.2d 372, 373 (5th Cir. 1932), the court also stated that:

nevertheless, a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained. *Any other result would be no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seaman more regularly into the courts of admiralty. Even if a seaman is the court's ward, the court cannot always be at hand to watch over him, for it can only move ponderously in a formal law suit. Fair settlements are in the interest of the men, as well as the employers.*

Id. at 439 (emphasis added).

The Louisiana Court of Appeal briefly mentioned two other factors to support its conclusion; namely, that against the recommendations of family and friends, respondent did not retain counsel, and that "pending proof of liability and numerous other factors," Ray "could" have received more for his injury had the case been fully litigated. *Ray*, 439 So.2d at 1105. Clearly, petitioner could

not compel respondent to retain counsel. Furthermore, the validity of a seaman's release does not depend upon whether or not a seaman is represented, but upon his informed understanding of his rights. *Charpentier v. Fluor Ocean Services, Inc.*, 613 F.2d 81 (5th Cir. 1980); *Turner v. American Dredging Co.*, 1977 A.M.C. 122 (E.D. Pa. 1977). In both *Charpentier* and *Turner* it was held that unrepresented seamen had received an informed understanding of their rights from counsel retained by the defendant shipowners to ensure that all legal requirements for a valid release were met. That is precisely the procedure that was employed in this case.

The validity of a seaman's release also does not depend on the court's conjecture that an injury such as Ray's, "pending proof of liability and numerous other factors, could be valued at a sum several times more than the settlement." 439 So.2d at 1105. Negotiation and settlement necessarily involve consideration of benefits and risks by both sides. See *Strange v. Gulf & South American Steamship Co.*, 495 F.2d 1235 (5th Cir. 1974); *Harmon v. United States*, 59 F.2d 372 (5th Cir. 1932). The holding of the United States Court of Appeals for the Fifth Circuit in *Strange*, a maritime case involving a longshoreman rather than a seaman, is particularly apposite here. The court stated that:

[t]here would be little security in the settlement of a personal injury claim if the binding effect of such a settlement depended upon the certainty of the extent and outcome of the injuries involved. It is the very consequences of these uncertainties which the parties seek to foreclose by settlement and to take their chances on the outcome.

Strange, 495 F.2d at 1237. Moreover, a release may not be set aside for inadequacy of consideration unless "the inadequacy of the settlement amount, when viewed in light of the injuries, [is] so flagrant as to shock the conscience of the court." *Cook v. Moran Atlantic Towing Corp.*, 1978 A.M.C. 2134, 2136 (S.D.N.Y. 1978). This release, and the consideration given to respondent, withstand full and minute scrutiny. The payment made here, coupled with the prior payments, the warranted medical payments and promised employment constitute adequate consideration in every sense of the term.

This is not a case in which a state court has correctly applied a controlling federal standard while simply employing inartful or incorrect terminology. Here the state appellate court has engrafted an entirely new and unmanageable element onto the controlling federal standard. In so doing, it has substantially altered the burden of proof required of a defendant shipowner under this Court's decision in *Garrett, supra*, and disrupted the uniformity of maritime law. Further, by stretching the maritime standard, the court has unwittingly hurt all seamen, by seriously impairing their ability to resolve their disputes against shipowners without resort to litigation.

C O N C L U S I O N

For the reasons stated, a writ of certiorari should be granted.

Respectfully submitted,

GEORGE W. HEALY, III
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone: (504) 566-1311
Counsel of Record for Petitioner

OF COUNSEL:

PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS

CERTIFICATE OF SERVICE

I, George W. Healy, III, a member of the Bar of this Court, certify that on this ____ day of April, 1984, three copies of this Petition for a Writ of Certiorari were mailed first class, postage prepaid, to T. Peter Breslin, Esq., 3213 Florida Avenue, Suite 100, Kenner, Louisiana 70062, counsel for the respondent. I further certify that all parties required to be served have been served.

George W. Healy, III

APPENDIX "A"

THE SUPREME COURT OF THE
STATE OF LOUISIANA

JAMES A. RAY

NO. 83-C-2561

VS.

DEFELICE MARINE CONTRACTORS, INC.,
INDIVIDUALLY AND AS A DIVISION OF
GULF FLEET MARINE OPERATIONS, INC.

In Re: DeFelice Marine Contractors, Inc. et. al., ap-
plying for Writ of Certiorari or Review, to
the Fifth Circuit Court of Appeal, No.
83-CA-302; Parish of Jefferson, Twenty-
Fourth Judicial District Court, No. 253-621.

January 27, 1984

Denied

JAD
WFM
JCW
HTL

BLANCHE, J., would grant the writ.

Supreme Court of Louisiana

January 27, 1984

/s/ Frans J. Labranche, Jr.

Clerk of Court
For the Court

APPENDIX "B"

COURT OF APPEAL, FIFTH CIRCUIT

STATE OF LOUISIANA

Clerk's Office, Gretna

November 17, 1983

Dear Sir:

**REHEARING WAS THIS DAY REFUSED IN THE
CASE ENTITLED**

James A. Ray v. DeFelice Marine Cont., et al.

No. 83 CA 302

Very truly yours,

Asward P. Theriot, Clerk

APPENDIX "C"

JAMES A. RAY

V.

DEFELICE MARINE CONTRACTORS, INC.,
Individually and as a Division of
Gulf Fleet Marine Operations, Inc.

NO. 83-CA-302.

Court of Appeal of Louisiana,
Fifth Circuit.

Sept. 13, 1983.

Rehearing Denied Nov. 17, 1983.

Before BOUTALL, KLIEBERT and GRISBAUM, JJ.

GRISBAUM, Judge.

Appellant, James A. Ray (Ray), filed suit against Defelice Marine Contractors, Inc., individually and as a division of Gulf Fleet Marine Operations, Inc. (Defelice) for \$2,100,000 in damages for a maritime injury resulting in the amputation of his left leg and disability of his right leg. Defelice denied liability and pleaded the action was barred by a \$115,000 settlement executed by Ray. Trial was limited to the validity of the release. This appeal is from the trial court's finding the release to be valid.

The issue is whether Ray had a full understanding of his rights when he executed the release. We reverse.

On September 29, 1978, Ray, while employed by

Defelice as a seaman, was transferring from a barge to a boat when he was crushed between the vessels and received severe injuries to both of his legs. Ray was treated at Defelice's expense by physicians of his choice and was paid \$100 per week maintenance. Defelice also provided Ray with \$3300 to purchase a car. Following his discharge from the hospital, Ray lived with friends in Houma, Louisiana but in December of 1978, Ray moved to Florida to stay with his mother. Dr. Samuel Steiner of Homestead, Florida assumed responsibility as the treating orthopedist and hospitalized Ray in February of 1979 for corrective surgery. During this hospitalization, Dr. Steiner called in a psychiatrist to see Ray because of behavioral difficulties. He was seen by Dr. Bernard Savariego who recommended Ray undergo limited psychotherapy. On May 7, 1979, Dr. Steiner wrote to Defelice's house counsel, Mr. Joseph McCusker, advising Ray had achieved maximum cure but also stated Ray might require additional surgery. After being discharged as able to return to work, Ray contacted Joseph McCusker and met with him to discuss a settlement. Ray was ultimately offered \$115,000 and the promise of a job with Defelice. After accepting these terms, Ray signed a release at the settlement conference.

Within eight months of the settlement, Ray spent most of the settlement money. He remained in Florida taking odd jobs until January of 1981 when he returned to work for Defelice. In November of 1981, due to an infection on the stump of his left leg, Ray required a revised amputation above the knee. Several months later, he quit his job with Defelice and returned to Florida to work.

In addressing the question of whether Ray had a full understanding of his rights Ray asserts the testimony of several psychiatrists shows Ray did not emotionally

understand the consequences of his injury. Dr. Savariego, the only psychiatrist who saw Ray prior to the settlement, stated "psychiatric evaluation did not show evidence of psychosis or depression" but stated plaintiff was "mildly grandiose as he described his present situation and future plans." He explained the term "mildly grandiose" has "no diagnostic significance within it. It's a descriptive term meaning that Ray had an exaggerated view of himself under the circumstances." Counsel for Ray and for Defelice executed a joint stipulation that because Dr. Savariego did not see Ray at the time of the settlement he had no opinion as to whether Ray was or was not in a position to enter into a final settlement for his injuries on May 17, 1979. Dr. Marilyn Skinner, a psychiatrist, was called in by Ray's second treating orthopedist, Dr. Manale, because Dr. Manale perceived Ray to be having difficulty dealing with his injury. Dr. Skinner saw Ray approximately eight times, commencing November 1981, which was two and one-half years after the settlement. She testified Ray "was depressed" and when asked what was Ray's psychological state at the time that she first saw him she stated:

[I]t is not abnormal for a person to deny the loss of his leg and say, "You know, I don't think this is so bad." For the first day, and then, of course, it kind of settles in and then they begin to experience a depression which is a normal depression and they work through that depression just as one has a normal period of mourning from the loss of a wife or a husband which society and medicine which would think was strange if a person didn't have a normal period of mourning for a loss and they would consider that a very serious sign that something was suspiciously very wrong, but after a period of time, that loss is appropriately mourned and accepted and worked through — whether a psychological loss of a

partner or the physical loss of a leg and/or the emotional loss attached to the physical loss, if that isn't worked through at some time, then it is not a normal depression — a normal grief reaction — it becomes a clinical depressive illness, per se — a pathological phenomenon.

When asked as to Ray's ability to understand on the date that he executed the release she stated:

My opinion is that as far as being able to read it, it is rather complicated legal reading for a poor physician but, I think, he is quite capable of understanding intellectually what he is reading — quote, unquote — and I think he is capable of everyday acts — signing checks; going to the grocery store; reading; writing; talking to people; saying "yes" or "no" and even capable of making a contract. However, I do not think that he was capable of appreciating the consequences of what he was doing....

In further elaborating she stated:

[I]t is inconceivable to me that he could have entered into a contract that would have actually taken into account the genuine ramifications which he himself did not take into account in any meaningful emotional way.

In further testifying she stated:

Obviously some one who is suffering from some real injury who at some various level of defensive denial denies the injury, is not in full appreciation of reality as you and I see it and, I think, that, of course, any time that you are excluding some sense of reality even if it is only in a symbolic way you limit your judgment, you limit your data.

Finally, Dr. Skinner frankly stated, "I would certainly say anything I have said about the patient prior to my seeing him should be taken with as many grains of salt as you may wish to take it with." and that she was speculating as to Ray's emotional state at the time of the settlement. Dr. Herman Colomb, a psychiatrist, saw Ray once at the request of Defelice's counsel. His opinion was Ray was an immature, impulsive individual who intellectually knew the probable consequences of his acts. Dr. Colomb further stated, "I don't think any nineteen year old, especially an immature nineteen year old, can emotionally appreciate such a thing." He finally stated he did not think Ray was depressed and his destructive behavior had been going on since his teens. Defelice argues there is a difference between a failure to appreciate the consequences of an injury and a mistake of fact as to the existence of an injury. In the former circumstances, the release may not be set aside. *Robles v. Trinidad Corporation*, 270 F.Supp. 570 (S.D.N.Y.1966). They further argue Ray knew the nature and meaning of the terms of the release at the time of its execution as evidenced by the fact Ray testified he understood the terms and understood once he signed and received the money it was "the end of the ballgame" insofar as any accident or injury which occurred during the course of his employment with Defelice. Also, all of the psychiatrists agreed Ray intellectually understood the terms of the release.

The applicable legal principles which guide this court were described in 1823 by Justice Story, stating:

[Seamen] are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are

accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees....If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on the other, the judicial interpretation of the transaction, is that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable And on every occasion the court expects to be satisfied, that the compensation for every material alteration is entirely adequate to the diminution of right or privilege on the part of the seamen. *Harden v. Gordon*, 11 Fed.Cas. at pages 480, 485, No. 6,047.

Over one hundred years later the Supreme Court in *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed.2d 239 (1942), a seaman's release case, reaffirmed the validity of the above pronouncements and established the standards by which such bargains were to be judged:

The analogy suggested by Justice Story ... between seamen's contracts and those of fiduciaries and beneficiaries remains, under the prevailing rule treating seamen as wards of admiralty, a close one. Whether the transaction under consideration is a contract, sale, or gift between guardian and ward or between trustee and cestui, the burden of proving its validity is on the fiduciary. He must affirmatively show that no advantage has been taken; and his burden is particularly heavy where there has been inadequacy of consideration.

The wardship theory has, as was recognized by the courts below, marked consequence on the

treatment given seamen's releases. Such releases are subject to careful scrutiny....We hold, therefore, that the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding....(Footnotes omitted.)

Recognizing the obligation to carefully scrutinize this seaman's release and the special relationship a seaman holds as a ward of the court, this court's interpretation of determining whether Ray had a full understanding of his rights includes not only an intellectual understanding but also an emotional understanding. This case involves a nineteen year old seaman who, from the reports of Dr. Savariego, Dr. Skinner, and Dr. Colomb, was an immature, impulsive and at least grief-stricken young man. Even though Dr. Skinner saw Ray some two and one-half years after the signing of the release, this court was impressed with her "qualified opinion" that it was inconceivable to her that Ray could have entered into a contract taking into account the genuine ramifications of his act in any meaningful emotional way. It was also her opinion Ray had "limited judgment." This court has also taken into account that in spite of Ray's mother, father, and friends recommending he obtain his own legal counsel, the fact remains prior to and including the time of the execution of the release, he did not have his own legal counsel. Coupled with these factors is the realization Ray released his rights for a very serious injury which, pending proof of liability and numerous other factors, could be valued at a sum several times more than the settlement.

This case does not present a situation of a medical miscalculation of the consequences of an injury but, rather, an emotional inability to understand the consequences of an injury. This court does not find a failure to disclose any known material medical facts nor fraud, deception, or coercion. However, when considering the totality of the circumstances, this court finds at the time of the execution of the release, Ray did not have a full understanding of his rights. Therefore, the release ought to be set aside as inequitable.

For the reasons assigned, we reverse the judgment of the trial court, and assess all costs of this appeal to appellee.

REVERSED.

APPENDIX "D"

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 253-621

DIVISION "D"

JAMES A. RAY

VS.

DeFELICE MARINE CONTRACTORS, INC.
Individually and as Division of
GULF FLEET MARINE OPERATIONS, INC.

REASONS FOR JUDGMENT

In May, 1979, for the sum of \$115,000, James A. Ray, executed a seaman's release relative to injuries sustained in a marine accident, in which he sustained the loss of his left leg, and other injuries. At the time of the settlement Mr. Ray was not represented by counsel and he now seeks to set this release aside on the theory that he was coerced into not seeking legal advice by threats of losing his compensation and that his physical and mental condition precluded his full understanding and appreciation of his injuries, and that under all circumstances considered, the amount of settlement was inadequate. At the time of the settlement, plaintiff, James A. Ray was nineteen years of age.

At trial, James A. Ray, impressed the Court as an individual of above average intelligence for his age and educational background. He handled himself well on the witness stand. The Court is convinced that the release was entered into with a full understanding of the rights of the parties, and that James A. Ray, was neither mentally or

physically incapacitated from fully understanding and appreciating the consequences of its signing.

Further, the contention that he was coerced into not seeking legal counsel did not impress the Court in view of the totality of the testimony involving the negotiations and settlement. The Court feels that Mr. Ray could have at any time anonymous or not, consulted an attorney without defendant's knowledge, to ascertain what his rights were relative to the accident. The Court is not impressed with this argument as advice of counsel in this day and age is readily available. The Court is convinced that Ray's decision not to seek counsel was his free and voluntary choice and he was never coerced or intimidated in reaching this decision.

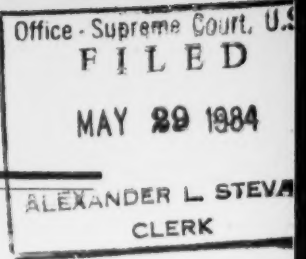
In connection with the question of adequacy of consideration, the Court finds that at the time the release was executed Mr. Ray was paid the sum of \$115,000. In addition to this amount he received other benefits from the company, one being that of an automobile. Plaintiff was also given employment with the company, which he later decided to terminate, on his own initiative. In considering the question of the consideration, the Court has reviewed both State and Federal cases that are similar to this one in nature, and finds that the amount paid to James A. Ray and the other benefits he received, was not so insufficient in nature as to shock the conscience of the Court as to make the settlement made and release obtained invalid.

Gretna, Louisiana, this 2nd day of December, 1982.

/s/ Walter E. Kollin

JUDGE

2
No. 83-1744



**In the
Supreme Court of the United States**

OCTOBER TERM, 1983

**DEFELICE MARINE CONTRACTORS, INC.,
Individually and as a Division of
GULF FLEET MARINE OPERATIONS, INC.**

Petitioner

versus

JAMES A. RAY,

Respondent

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
FIFTH CIRCUIT, STATE OF LOUISIANA**

**OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

**T. PETER BRESLIN
3213 Florida Avenue, Suite 100
Kenner, Louisiana 70065-3695
Telephone: (504) 468-9181
Counsel of Record for Respondent**

May, 1984

**Of Counsel:
GAUTHIER, MURPHY, SHERMAN, McCABE
& CHEHARDY**

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

BEST AVAILABLE COPY

8 pp

TABLE OF CONTENTS

	PAGE
Table of Contents	i
Jurisdiction	1
Statement of the Case	2
Reasons for Denying the Writ	3
Conclusion	5
Certificate of Service	6

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

DEFELICE MARINE CONTRACTORS, INC.,
Individually and as a Division of
GULF FLEET MARINE OPERATIONS, INC.

Petitioner

versus

JAMES A. RAY,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS,
FIFTH CIRCUIT, STATE OF LOUISIANA

OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

JURISDICTION

Respondent, with respect, objects to the present jurisdiction of this Court based on the fact that this matter is still proceeding in the Courts of the State of Louisiana. Trial on the merits of this matter is presently set for June 20, 1984, and therefore, there has been no final determination with respect to the merits of this claim to date. Furthermore, this Petition for Certiorari is contrary to Rule 20 of the Supreme Court Rules in that there has been no showing of "imperative public importance" to warrant immediate settlement in this Court.

STATEMENT OF THE CASE

There are a number of areas which, it is respectfully submitted, must be clarified. The bulk of the objections to the petitioner's statement of the case are, in fact, relative to the merits of this claim, but in an abundance of caution at this point, respondent would state:

On page 2 of the Petition for Certiorari, petitioner states that,

"Ray subsequently initiated settlement negotiations with petitioner. Furthermore, the negotiations culminated in a settlement whereby Ray agreed to release his legal rights against petitioner..."

In reality, however, there were *no negotiations*. Mr. Ray was presented with a take-it-or-leave-it-offer by the representative of petitioner. Even house counsel for petitioner admitted that,

"it was not a negotiated process". (See p. 81 of the trial transcript, day "2")

Similarly, the petitioner has suggested that a part of the consideration of the settlement was the promise of continued employment. (See p. 2 of Petition for Certiorari) In reality, there was no promise made of a lifetime job, whatsoever, and according to the transcript of the purported settlement proceedings, if Mr. Ray were discharged, fired, or terminated, the settlement would still be binding. (See appendix "D"; record at pp. 677, 678)

Finally, and most importantly, respondent objects to

the assertion made by petitioner that the decision of the appellate court was based primarily on the testimony of Dr. Skinner. (See p. 3 of Petition for Certiorari) Rather, it is respectfully submitted, that the Court's decision was based on the totality of the circumstances which evidenced the fact that Ray did not have a full understanding of his rights. (See Appendix "C" to the Petition for Certiorari, p. A-10) The totality of the circumstances considered by the Court of Appeal included the fact that Mr. Ray at the time of the purported settlement was, indeed, unrepresented by an attorney of his choosing, there was no negotiation as is common in this type of procedure, there was no judicial approval obtained, although access to said approval was, in fact, available, and the consideration afforded for the severe injuries sustained by Mr. Ray was sorely inadequate as is reflected in the Court's opinion in Appendix "C" of the Petition for Certiorari, p. A-9; wherein it is stated,

"Coupled with these factors is the realization Ray released his rights for a very serious injury which, pending proof of liability and numerous other factors, could be valued at a sum several times more than the settlement."

Again, respondent respectfully submits that the "emotional understanding" issue which the petitioner has sought to have reviewed by this Court is, in fact, merely one of many factors which led the Court of Appeals to set aside the purported release and to allow Mr. Ray to present his case in Court and prove, if possible, the degree and extent of damages which were, in fact, sustained.

REASONS FOR DENYING THE WRIT

The foremost reason for denying the writ applied for

by Petitioner, in this matter, is the fact that, at this point, the matter is still pending in the lower courts and no judgment has, in fact, been rendered. In the classic sense, this matter is, therefore, not ripe for determination by the United States Supreme Court.

Certainly, subsequent to the rendition of a judgment against the petitioner and after the appropriate appeals in the lower courts, there will be the opportunity to review the issues presented in this Petition for Certiorari.

The petitioner's attempt to suggest that the decision rendered in this case is "disruptive of the uniformity of the Federal Maritime Law and, therefore, serves as a disincentive for seamen to resolve disputes amicably" is clearly in error. Rather, this decision affirms the long standing tradition of protection for seamen and further affirms the shipowner's responsibility to insure a *full* understanding of one's rights prior to entering into settlement negotiations.

As stated previously, this matter is set for trial on June 20, 1984. At that time the District Court will have the opportunity to judge the merits of this claim. Clearly, the petitioner is entitled to a credit for the amount previously paid in settlement, but for some reason petitioner is concerned that the judgment rendered will be in excess of the amount previously tendered. As such, petitioner is doing all in its power to deny Mr. Ray his day in court. Such a result would fly in the face of this Court's traditional stand relative to seamen's releases and would certainly not be a service to seamen as petitioner has artfully suggested.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

T. PETER BRESLIN
3213 Florida Avenue, Suite 100
Kenner, Louisiana 70065-3695
Telephone: (504) 468-9181
Counsel of Record for Respondent

OF COUNSEL:
GAUTHIER, MURPHY, SHERMAN, McCABE
& CHEHARDY

CERTIFICATE OF SERVICE

I, T. Peter Breslin, a member of the Bar of this Court, certify that on this 25th day of May, 1984, three copies of this Opposition to Petition for a Writ of Certiorari were mailed first class, postage prepaid, to George W. Healy, III, 1300 Hibernia Bank Building, New Orleans, Louisiana 70112, counsel for the petitioner. I further certify that all parties required to be served have been served.

T. PETER BRESLIN